Claims Report

United States Army Claims Service

Vehicle Theft and Vandalism Off-Post

Paragraph 11-5h(5) of *Army Regulation (AR) 27-20* permits claims offices to pay for off-post theft and vandalism of privately owned vehicles in certain very limited situations.[1] Such theft and vandalism is compensable under the Personnel Claims Act[2] only if the claimant submits clear and convincing evidence that the damage was incident to service.[3] The claimant does notneed to be on temporary duty or using his vehicle to perform a military mission at the time the theft or vandalism occurred. In addition, the damage is not compensable if the theft or vandalism occurred at non-government quarters in a state or the District of Columbia.[4]

For example, if a claimant is dining at an off-post restaurant, and his vehicle, bearing a military sticker, is spray painted with the phrase "soldiers kill babies," there is sufficient evidence of a direct connection between the claimant's service and the damage. Therefore, the claims office should pay the soldier's claim. On the other hand, if the same claimant is dining at an off-post restaurant and his vehicle is intentionally scratched, the mere presence of a military sticker on the vehicle is not sufficient evidence of a service connection. The claims office should not pay such a claim. Alternatively, if a group of vehicles bearing military stickers are parked in a lot with other vehicles, and the vehicles with stickers are the only ones scratched, this may be sufficient evidence of a service connection, allowing the claims office to pay the claims. Mr. Lickliter, Lieutenant Colonel Masterton.

Use of Privately Owned Vehicles (POVs) for the "Convenience of the Government"

Claims offices may pay for damage to POVs only in limited circumstances. One circumstance is when a claimant uses his privately owned vehicle to perform a military duty "for the convenience of the government."[5] These claims are generally payable if the claimant is reimbursed for mileage for the trip. Unfortunately, it is often difficult to determine whether a vehicle is being used "for the convenience of the government" or whether the claimant can be reimbursed for mileage.

To determine if these claims can be paid, claims offices should divide them into three categories. The first category includes claimants who have written orders authorizing them to use their vehicles for military duties. The second category includes claimants who do not have written orders, but obtained oral permission to use their vehicles for military duties. The third category includes claimants who do not have written orders or oral permission, but were actually using the vehicle for military duties.

Claims offices can usually pay claims in the first category (where the claimant has written orders). Written orders will normally state that the claimant is entitled to reimbursement for mileage. Additionally, they often specifically state that he is entitled to use his POV "for the convenience of the government."[6] The written orders, however, must have been issued *before* the damage being claimed occurred. Written orders that are issued after the fact raise the presumption that the travel was not for the convenience of the government.[7] In addition, a claimant who is on written orders is not using his vehicle for the convenience of the government if he deviates from the orders. For example, losses that occur while a soldier is on leave in conjunction with authorized temporary duty orders, are generally not compensable. Similarly, a soldier who has orders authorizing him to drive his vehicle from Fort Drum to Fort Meade is not using his vehicle for the convenience of the government if he deviates from the route by traveling to Maine to visit relatives.[8]

The second category (involving oral permission) may result in a compensable claim if the claimant clearly obtained the oral permission to use his vehicle *prior* to the travel. Travel without written orders may result in entitlement to mileage reimburse-

1. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS (31 Dec. 97) [hereinafter AR 27-20].

2. 31 U.S.C.A. § 3721 (West 1998).

3. U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES, para. 11-5h(4) (1 Apr. 1998)) [hereinafter DA PAM 27-162].

4. AR 27-20, *supra* note 1, para. 11-5h(5). The limitation is required by the Personnel Claims Act, 31 U.S.C.A. § 3721.

5. DA PAM 27-162, *supra* note 3, para. 11-5h(1). Losses that occur when the claimant is commuting to or from his permanent place of duty, and losses that arise as a result of a mechanical or structural failure of the vehicle are not compensable. *Id.*

6. DA PAM 27-162, *supra* note 3, para. 11-5h(1)(a).

7. *Id.*

8. *Id.* para. 11-5(1)(b).

ment and be deemed "for the convenience of the government" if the claimant's superior directed him to use a privately owned vehicle to accomplish a mission.[9] Claims personnel should ensure that the authorization was clear and was issued before the damage occurred.

The third category generally will not result in a compensable claim. This category involves soldiers and civilian employees who use their vehicles for military duties, but fail to obtain proper authorization. In these situations, reimbursement for mileage is generally not authorized. Similarly, the use is not "authorized or directed" for the "convenience of the government." Consequently, any damage that results generally is not compensable. Lieutenant Colonel Masterton.

Evidence of Driving Under the Influence (DUI) in an Article 139 Claim

Will a soldier driving while under the influence of alcohol be subject to liability under Article 139 of the Uniform Code of Military Justice[10] for damage he causes in an automobile accident? The answer to this question is not a simple yes or no. The degree of intoxication is one factor that claims offices should examine to determine whether the soldier's actions were in "reckless and wanton disregard for the property rights of others."[11]

A soldier can be held liable under Article 139 for damage to property only if his actions were "willful." Willful damage to property falls into one of two categories: (1) damage caused intentionally (i.e. vandalism), and (2) damage resulting from "riotous, violent or disorderly acts, acts of depredation or acts showing a reckless and wanton disregard for the property rights of others." Situations in which a soldier intentionally causes a motor vehicle collision will be rare. A field office, however, may receive Article 139 claims involving actions by military drivers that could be considered reckless and wanton, including allegations that the soldier was intoxicated at the time of the collision.

Neither *AR 27-20*[12] nor *Department of the Army Pamphlet 27-162*[13] deals specifically with DUI as it relates to Article 139 claims. Given the standard of "reckless and wanton disregard" needed to subject a soldier to liability for damage to property, there is no "bright line" to establish liability merely by proving that a soldier was under the influence of alcohol at the time of an accident. The degree of intoxication[14] may be sufficient, either alone or in combination with other evidence of recklessness, to establish that the soldier's actions leading up to the collision were "willful." Legal intoxication, sufficient to subject the soldier to criminal liability, is not determinative. This situation is analogous to a soldier who may have exceeded the speed limit at the time of the accident—Article 139 liability is not automatic.[15] Mr. Kelly.

Staff Judge Advocate (SJA) Denial of Requests for Reconsideration

Paragraph 11-20d of *AR 27-20*[16] states that an SJA may deny a request for reconsideration if the following requirements are met: (1) there is no new evidence submitted, (2) the request is submitted after the sixty-day time limit, and (3) the amount under dispute is not more than $1000. Paragraph 11-20e[17] states that requests for reconsideration must be forwarded to the United States Army Claims Service (USARCS) if "any" of the criteria above are not met. The intent of these apparently conflicting provisions is to permit SJAs to take final action denying requests for reconsideration *if and only if* the amount in dispute is not more than $1000. Any previous guidance to the contrary should not be followed.

For example, if claimant Alfred submits a request for reconsideration asking for $1200 more than he was paid originally, but has not submitted the request within the sixty-day time limit, this request should be forwarded to the USARCS. Similarly, if claimant Brenda submits a request for reconsideration asking for $1200 more than she was paid and does not submit any new evidence, this request should also be forwarded to the USARCS. On the other hand, if claimant Charlie submits a

9. *Id.* para. 11-5(1)(a).

10. UCMJ art. 139 (1996).

11. DA PAM 27-162, *supra* note 3.

12. *Id.*

13. DA PAM 27-162, *supra* note 3.

14. The degree of intoxication may be established through a blood alcohol test or eyewitness testimony.

15. *See* DA PAM 27-162, *supra* note 3, para. 9-4a(2). According to *DA Pam 27-162*, an Article 139 claim against a soldier who drove a car at 80 miles per hour in a 55-mile zone, crossed the centerline, and collided with an oncoming vehicle is not cognizable. This example is intended only to illustrate this principle. If excessive speed or other facts tend to show willful conduct, a claim will be cognizable.

16. AR 27-20, *supra* note 1.

17. *Id.*

request for reconsideration within sixty days which contains new evidence, but only requests $100 more than he was paid, the SJA may take final action denying this request (unless one of the other conditions in paragraph 11-20e is met).[18] Similarly, if claimant Deborah submits a request for reconsideration asking for $1200 more than she was paid, and she is paid $600 of what she is asking for, the SJA can take final action denying the rest of her reconsideration. The key is the amount in dispute. You must ask yourself whether the amount is under $1000.

Staff Judge Advocates may always take final action on a request for reconsideration if the claimant is fully satisfied with the action taken. On the other hand, SJAs should always send requests for reconsideration involving questions of policy or practice to the USARCS. In addition, SJAs should always send the USARCS requests for reconsideration involving claims on which they personally acted initially. Since SJAs are required to act on all denials, this means they should always send these requests for reconsideration to the USARCS. Mr. Lickliter, Lieutenant Colonel Masterton.

18. *Id.* The other conditions are: (1) the request involves a claim on which the head of an area claims office or higher settlement authority has personally acted, where that individual believes the request should be denied, and (2) the request involves a question of policy or practice that the head of an area claims office or higher settlement authority believes is appropriate for resolution by the Army Claims Service. *Id.*